Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights

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Beyond National Security: Immigrant Communities and Economic, Social and Cultural Rights

A Report Summarizing a Human Rights Institute held at Northeastern University School of Law on October 14-15, 2010

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Introduction

This report summarizes the deliberations of participants at “Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights,” an institute sponsored by the Program on Human Rights and the Global Economy (PHRGE), the Ford Foundation, and the American Society of International Law Human Rights Interest Group. The event brought together dozens of scholars, human rights and immigration lawyers, community activists, and law students for sessions hosted at Northeastern University School of Law in Boston, Massachusetts on October 14-15, 2010. This diverse group met in plenary and small group sessions to discuss the efficacy of using international human rights standards and strategies to achieve social justice for all, including for noncitizens in the United States.

The institute opened with a public plenary roundtable that set the broad framework and highlighted key issues for discussion during the two-day meeting. Sessions also served as the basis for development of a set of guidelines, “The Boston Principles on the Economic, Social and Cultural Rights of Noncitizens,” which are available for use by advocates, scholars, students and other individuals who hope to promote recognition of human rights for all in the United States as well as outside it.3

Opening Public Roundtable Discussion 1: Beyond National Security: Immigrant Communities and Economic, Social and Cultural Rights

The opening plenary featured Ana Avendaño, AFL-CIO; Muzaffar Chishti, Migration Policy Institute; Wade Henderson, Leadership Conference on Civil Rights and Human Rights; Marielena Hincapié ‘96, National Immigration Law Center; and Professor Margaret Burnham, Northeastern University School of Law (moderator).

Participants weighed in on the state of the economic, social and cultural (ESC) rights of immigrant communities in the United States. The discussion analyzed how the national security construct and the economic downturn have facilitated both increased criminalization and isolation of immigrant communities and the growing exploitation of immigrant workers. In order to combat the dehumanizing anti-immigrant sentiment pervading these trends, the panelists examined the usefulness of the human rights framework in redefining this debate to highlight immigrants’ fundamental human rights as well as the broader value of including immigrant communities’ contributions.

Panel participants began by noting that noncitizens’ enjoyment of economic, social and cultural rights in the U.S. has been negatively affected by the increasing criminalization of immigration, inappropriate state and local attempts to reinterpret or enforce federal immigration laws, local anti-immigrant ordinances, and anti-immigrant discretionary practices adopted by public actors such as schools and public benefits offices. One panelist called attention to the changing interplay between immigration and the criminal justice system as one of the most important recent developments in immigration—a development not sufficiently appreciated by advocates and scholars. He pointed out that the devolution of immigration enforcement authority to state and local law enforcement agencies through programs such as “287(g)” and “Secure Communities” has proceeded rapidly with little transparency or oversight. Critics have denounced these programs as fomenting racial profiling and escalating detention and deportation rates, with the lack of oversight causing significant inconsistencies in the way the programs are implemented in different localities.

These intensified and overbroad enforcement efforts have created additional barriers for immigrants attempting to access economic support, health care, education and other core ESC rights. As one panelist pointed out, immigrant access to economic support may be limited by state laws requiring social service providers to ask parents about their immigration status when they apply for benefits for their U.S. citizen children, and requiring those providers to report undocumented immigrants to Immigration and Customs Enforcement (ICE). Immigrant access to health care, a topic
discussed at length in a subsequent session, has been severely limited under the health care reforms enacted during the Obama administration. Noncitizen access to education has been compromised by school districts refusing to enroll immigrant children and states refusing to support noncitizen students pursuing higher education.

The global economic downturn has also been used to fuel an anti-immigrant climate in which immigrants are used as scapegoats for the jobs crisis – although the attacks on migrant workers predate the economic crisis. Recent anti-immigrant efforts are also indicative of a larger attack on freedom of association and workplace rights at the center of a global economic agenda. The manipulation of legal structures to deny workers the ability to exercise their collective and individual workplace rights facilitates employer exploitation of migrant workers. Such workers bear the brunt of these attacks and make up a growing percentage of the low wage labor market, where labor law violations are systemic and severe. The criminalization of immigrant communities not only benefits employers by keeping immigrant workers vulnerable to immigration-related threats, it is also a profitable boon to the private prison industry because the need for detention beds grows as detention rates rise.

For many years, advocates focused on comprehensive immigration reform (CIR) as the primary strategy for advancing immigrants’ rights. But the panelists all agreed that achieving CIR was an unlikely prospect in the short term given the lack of bipartisan support. One panelist felt that we needed to do a better job of finding a way to tie CIR to sustained economic recovery that would be good for the whole country. Such a framework would allow immigrant advocates to harness the economic self-interests of other groups to build larger coalitions. Another panelist proposed that advocates shift their focus towards winnable incremental changes such as the Development, Relief and Education for Alien Minors (DREAM) Act and the Agricultural Job Opportunities, Benefits and Security (AgJobs) Act. Both pieces of legislation would provide opportunities to access immigration status, but only for a limited number of individuals who met the eligibility criteria. Another panelist opined that the focus on CIR has limited our thinking and that we need to shift our focus towards a human rights approach that can challenge the underlying anti-immigrant exclusionary sentiments behind many of the recent changes to the laws. This is necessary because even if we were to achieve CIR, it would not resolve the deep-seated animus towards immigrant communities demonstrated by recent attacks such as those on birthright citizenship. Human rights frameworks provide an opportunity to counter racialized scapegoating with values of inclusion and integration.

All panelists agreed that the human rights framework is helpful to them in their work, but varied as to the reasons they found it helpful and the means by which they use human rights. One panelist mentioned that processes such as the U.N.’s Universal Periodic Review (discussed more fully in subsequent sessions) are helpful devices for pushing domestic policy changes around issues like Arizona’s SB1070. Another panelist mentioned that many of the things being fought for, such as quality public education,
are not recognized under our domestic framework as fundamental civil rights but are recognized as human rights in the international framework – thereby providing us with more tools for advocacy and organizing domestically. Yet while human rights language can be helpful to framing and messaging around issues, it is often a “non-starter” in Washington, D.C. lobbying. One panelist pointed out that while human rights can be used in workplace organizing, and there may be advocacy around individual human rights, it is important that they do not, as individual rights, undercut or supplant the collective rights to freedom of association and to form trade unions.
Closed Session I: The Economic, Social, and Cultural Impact of Deportation, Detention, and Profiling

This session examined the impact of deportation, detention, and profiling on the economic, social and cultural (ESC) human rights of noncitizens as well as on their civil and political rights. The session was facilitated by Professor Rachel E. Rosenbloom, Northeastern University School of Law. Lead discussants were Janis Rosheuvel, Families for Freedom; John Willshire-Carrera ’85, Harvard Immigration & Refugee Clinic of Harvard Law School and Greater Boston Legal Services; Ellen Gallagher ’91, U.S. Citizenship and Immigration Services (in her personal capacity); and Kathleen Sullivan, independent consultant.

Although the civil and political rights of noncitizens are clearly implicated when they are detained or deported, the participants examined how the ESC framework could be used to describe and analyze the broader impacts of detention, deportation, and profiling – not only on those detained or deported, but on all noncitizens and their communities. In particular, participants discussed the ability of ESC rights to provide a framework for discussing the impact on collective rights.

Immigration detention has existed in the United States for many years; historically it was used primarily against those deemed particularly “undesirable” or “dangerous,” such as members of the Communist Party. But with the changes in the immigration laws in the 1980s and 1990s, the rates of detention increased significantly – from a few thousand people in immigration detention each night to the current level of 33,000 people per night. The number of criminal offenses for which noncitizens could be deported also increased dramatically. These changes in the immigration laws were part of a much larger shift in the country generally, i.e., from a Keynesian welfare state to a neoliberal state focused on security and privatization.

The result of these changes in the law has been an increased risk of detention and deportation, which has been compounded in recent years by a spate of anti-immigrant ordinances and local immigration enforcement initiatives. Together these legal reforms, ordinances, and initiatives have created a climate of fear that pervades all areas of the lives of noncitizens in the US. According to the participants, many noncitizens are afraid to go to work, send their children to school, access any kind of social services (including domestic violence shelters), or call the police when they witness, or are the victims of, crimes. Pushing this population further underground negatively impacts local economies, as evidenced by recent trends in Arizona.
One area of particular concern was the effect of expanded rates of detention on access to medical attention for immigration detainees. Although the Supreme Court recognized a universal right to health care for all people incarcerated in the U.S. in Estelle v. Gamble, it has become clear that the immigration detention health care system is not properly equipped to handle this responsibility.\(^4\) This is due partially to the fact that the system was designed to provide emergency medical care for healthy young males (the majority of detainees prior to the expansion of detention) for what was presumed to be a short period of time. As detention has expanded to include people who have lived in the U.S. for many years, and as these people are held for progressively longer periods of time, the health care system is ill prepared to properly address the needs of women, children, and older detainees or to provide accessible care for persons with disabilities. The care provided does not meet the standards of outside providers or the Department of Homeland Security itself in many instances.

Faced with this daunting set of conditions, advocates have found the human rights framework to be an important tool in responding to the expansion of deportation, detention, and profiling. The human rights framework provides not only concrete mechanisms for what can be done to respond to this expansion, but also makes key contributions to the vocabulary and conceptual framework used in creating a broad-based response. The examples mentioned during the session were numerous; this report will highlight a few key examples based on participants’ experiences.

Participants mentioned several examples of international human rights mechanisms that address the shortfalls of domestic legal systems related to deportation, detention, and profiling. Advocates from Arizona have testified before the United Nations in Geneva on the racial profiling and human rights violations that have stemmed from local immigration enforcement programs such as the Immigration & Nationality Act (INA) § 287(g).\(^5\) In fact, some Arizona advocates believe the primary reason the Department of Justice sued the State of Arizona over SB1070 was that the Obama Administration wanted to avoid criticism around racial profiling when it appeared for its Universal Periodic Review before the U.N. Human Rights Council in November 2010. Families for Freedom included stories from its members in an amicus brief before the Inter-American Commission on Human Rights regarding violations to the right to family life caused by deportation in mixed-status families.\(^6\) In the European


Union, detained noncitizens have been able to secure their release through appeals to the U.N. Working Group on Arbitrary Detention.\(^7\)

International human rights standards are also being incorporated into the arguments made by advocates in the domestic legal arena. Human rights concepts are helpful to immigration advocates in defining the harms their clients would suffer if not granted asylum. Several advocates mentioned pushing for expanded use of discretion by immigration judges in the removal process, based in part on arguments grounded in human rights conventions and concepts.

Some discussed the use of the Convention on the Rights of the Child, the “best interests of the child” standard, and the right to family life to argue against the deportation of parents of U.S. citizen children.\(^8\) This tactic, however, has so far not proven a viable defense to deportation in the U.S. In Beharry v. Reno, a federal district court judge, citing the Convention on the Rights of the Child and other international human rights instruments, ruled that a noncitizen parent of a U.S. citizen child should be granted a discretionary waiver of deportation based on the extreme hardship to the child.\(^9\) But the Second Circuit Court of Appeals overturned this district court decision.\(^10\) Partly because the U.S. has not ratified the Convention on the Rights of the Child, attempts to invoke its protections have shown it has limited justiciability in domestic courts.

Participants reiterated, however, that in spite of this outcome they believe that the more U.S. advocates incorporate such human rights-based arguments into domestic pleadings, the more weight they will eventually have with judicial decision-makers. To underscore this point, participants mentioned that in Baker v. Canada, the Canadian Supreme Court granted a humanitarian stay of deportation to the mother of four Canadian-born children when she was discovered to be living in the country without immigration status.\(^11\) The decision was based partly on the recognition that such a deportation would violate the human rights of her Canadian-born children, which were protected by the Convention on the Rights of the Child, to which Canada is a party.\(^12\)

\(^7\) For additional information on the procedures of the U.N. Working Group on Arbitrary Detention, see Working Group on Arbitrary Detention, Office of the High Commissioner for Human Rights, http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx (opinions on individual cases are available in the “Documents” section of the webpage).
\(^10\) Beharry v. Ashcroft, 329 F.3d 51 (2d Cir. 2003).
The human rights framework also provides a vocabulary and conceptual framework advocates have used in creating a broad-based response to the expansion of deportation, detention, and profiling. This response has included not only legal advocacy in the national and international arenas, but also community education and organizing as well as media campaigns. Participants mentioned that the human rights framework is helpful in organizing and building leadership among the people directly affected by deportation, detention, and profiling because it speaks directly to their lived experiences. Participants have also used the Vienna Convention on Consular Relations to conduct advocacy and education with consular officials about their responsibilities to nationals of their countries who have been detained in the U.S.\textsuperscript{13}

The international human rights mechanisms mentioned above also provide opportunities for drawing international media attention and scrutiny to domestic human rights violations and help create accountability when the U.S. government fails to take action to address these violations. Such accountability is especially useful when the violations are occurring due to programs or policies that the executive branch can modify without congressional approval. For example, the Committee on ESC Rights in General Comment 14 sets out four criteria for evaluating the right to health: availability, accessibility, acceptability, and quality.\textsuperscript{14} Advocates have determined that the health care provided in the U.S. immigration detention system fails on all four criteria.

These mechanisms also provide concrete ways that advocates can get the stories of those directly affected by the expansion of deportation, detention, and profiling into the national discourse around immigration. By using the human rights lens to focus on the “human interest” aspect of these stories, advocates are countering the increasing trend towards the framing of immigration as a predominantly national security issue. Participants signaled the potential of the ESC rights framework to illustrate how the effects of deportation, detention, and profiling extend beyond civil and political rights and have secondary effects both on those detained and their communities with regards to their rights to a decent livelihood, education, and family life.

Participants also discussed some of the limitations and shortcomings of the human rights approach with regards to the national debate around deportation, detention, and profiling. In particular, some participants felt that appeals to self-interest (i.e., highlighting the excessive costs of expanded detention, the long term threats to democracy posed by a massive “underclass” of noncitizens, or the risk of bad press)


could be more effective in “flipping” political leaders to favorable positions than appeals to humanitarian concerns regarding the human rights of noncitizens, given the general disdain both for immigrants and international human rights in this country. Others responded to this criticism by pointing out that such appeals to self-interest are counter to attempts at building solidarity and breaking down barriers between U.S. citizens and “the other.” Participants agreed that no one approach is appropriate in all situations, but rather agreed that arguments could be made based both on self-interest as well as on shared interests depending on the context.

Another limitation of the human rights framework mentioned was its lack of effective analysis of corporate power. By targeting only states for accountability with regards to human rights violations, when corporations cause many human rights violations, the current framework fails to focus needed accountability efforts directly on corporate actors.

The Session’s Boston Principle Recommendations:

- Push for expanded use of discretion in deportation proceedings.
- Use the Boston Principles to illustrate the additional effects of detention, deportation, and profiling on the ESC rights of the immigrant community.
- Include corporate accountability.
- Stay in touch with advocates in other countries; we can learn from each other’s strategies.
Closed Session II: Immigrant Communities and Well-Being: The Right to Health, the Right to Health Care, and the Rights of Immigrants with Disabilities

This session examined health and health care issues facing immigrant communities in the U.S. In particular, participants discussed immigrant access to health care, the problems with health care in immigration detention facilities, and special issues facing immigrants who suffer from mental illnesses or those who have intellectual or physical disabilities. The session co-facilitators were Professors Brook K. Baker ’76 and Aziza Ahmed of Northeastern University School of Law. Lead discussants were Anjana Malhotra, Seton Hall University School of Law; Laura Rotolo, American Civil Liberties Union of Massachusetts; and Sue Willman, a Fulbright Scholar at Georgetown University School of Law and partner in the London, England public interest law firm of Pierce Glynn.

Over the last fifty years, immigrant access to government-subsidized health insurance has decreased progressively. When Medicare was originally enacted in 1965, the law affirmatively gave access to lawful immigrants. In 1973, however, the Social Security Administration began limiting benefits for noncitizens, and the welfare reform of 1996 prohibited many lawful permanent residents from receiving coverage under most government-sponsored medical care programs – to say nothing of access for undocumented immigrants. Private employer-sponsored insurance – the mainstay of health insurance coverage for most people in the United States – is much less likely to be offered to immigrant workers, because they often work in low-wage or subcontracted jobs where employers do not provide health insurance.

As a result, current health care insurance coverage for noncitizens is governed by a patchwork of old laws. Their inconsistencies are compounded by a lack of state funding. Federal law does not prohibit states from providing health benefits to noncitizens, and last year 22 states afforded immigrant women and children access to some forms of state-funded medical benefits. While President Obama has repealed some restrictions on immigrant access to the federal programs, advocates predict there will soon be serious rollbacks to the programs that already exist as a result of budget crises on the state level.

One result of this lack of access is that many undocumented immigrants are uninsured and the 2010 health care reform excluded many noncitizens. One participant noted that, ironically, the 1996 welfare reform was passed in part in response to widely-spread myths that immigrants come to the U.S. primarily to obtain health care.
When noncitizens are uninsured, their out-of-pocket health care costs are higher than those paid by insured people, making them less able to pay for the health care they need. Uninsured noncitizens are therefore much less likely than citizens to use health services, and as a result suffer severe health disparities. For example, many noncitizens have higher rates of maternal mortality and heart conditions that have gone untreated.

All persons in the United States, including noncitizens, have the right to emergency treatment. This right was elaborated in response to the practice of “patient dumping.” Some hospitals, although capable of providing the necessary medical care, began transferring indigent patients (or those who were perceived not to have health insurance) to other facilities or refusing treatment entirely. As a related matter, some hospitals engaged in the extrajudicial involuntary repatriation of uninsured immigrant patients by sending uninsured immigrant patients back to their country of origin with little or no provision for follow-up care. In addition to violating the due process rights of the noncitizens involved – only the federal government can deport noncitizens – this practice also violates laws requiring hospitals not to discharge unstable patients and to provide patients with appropriate discharge plans. Legal challenges to this practice have not yet proven fruitful, and a Florida court recently found for a hospital that engaged in this practice.15

Although there is no doubt that immigrants detained in the U.S. pending removal proceedings have a constitutional right to health care while they are in custody, they face a series of challenges in accessing adequate health care. Many facilities are severely over-crowded, creating long waiting periods before detainees can see health care providers. Department of Homeland Security (“DHS”) approval is required for any treatment that goes beyond the basic care provided at the facility. These approvals are granted on a case-by-case basis, resulting in delayed diagnoses – if the procedures are authorized at all. DHS generally authorizes only such treatment as is necessary to carry out an individual’s deportation. Furthermore, immigrant detainees are frequently transferred from one facility to another without their medical records being transferred with them – a practice that disrupts the continuity of care. These are only some of the circumstances that have contributed to the more than 100 deaths in immigration detention since October 2003.16

Several participants raised the unique challenges faced by immigrants who are mentally ill or who have intellectual or emotional disabilities. Immigrants with mental illnesses or disabilities who lack immigration status or health insurance face significant challenges accessing mental health services in the community. Given this lack of access, some state mental health facilities feel the need to keep noncitizens past their release dates – in spite of the poor services generally available at such facilities.

Many noncitizens who have mental illnesses or who have intellectual or emotional disabilities are not afforded the right to appointed counsel in removal proceedings. Many end up representing themselves during their removal proceedings – even though no provisions are made to ensure they understand the nature or consequences of the proceedings, or that they have the capacity to give informed consent. Such barriers to due process are in addition to the language and cultural barriers that many noncitizens already face when trying to represent themselves in the immigration system. Furthermore, there have been numerous reports of unnecessarily high levels of psychotropic medicines administered to these detainees, and of detainees signing “voluntary” departure forms under the influence of these drugs.17 As a population facing a number of difficult challenges within the detention and deportation system, immigrants with mental or emotional illnesses or disabilities are an at-risk population in need of stronger and more sustained advocacy.18

There were varying points of view with regards to whether health status leads people to migrate to the U.S. One participant argued that this claim was used as a justification to keep noncitizens from receiving public health benefits and was untrue. One person argued that people migrate to the U.S. mostly in search of work. Another participant noted that, because of “brain drain” effects, health care providers increasingly leave their countries of origin in the global South in search of better opportunities in more industrialized nations. This phenomenon then pushes others with serious illnesses in such countries to seek better access to health care in the Global North.

Participants made several points illustrating how health status can trigger deportation – and how deportation affects health status. In the U.K., there is selective prosecution and deportation of African noncitizens based on the belief that they are more likely than other noncitizens to infect citizens with HIV. Because HIV-positive status can be a ground for deportation in the U.K., people delay getting diagnosed and treated out of fear of triggering their own deportation. Once a deportation takes place, the effects on the health status of the deported person and his or her family are significant. In addition to the emotional trauma, all involved are put in more precarious financial circumstances, thereby endangering their health and access to care.

The international human rights framework has been useful both in challenging health-related violations during detention and deportation proceedings and in conducting outreach and education around these issues. One participant mentioned a case where the deportation of an HIV-positive individual to Jamaica was found to violate provisions

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of the OAS charter guaranteeing a right to health. Another participant mentioned how advocates in the U.K. were using laws prohibiting disability discrimination to push for the release of HIV-positive individuals from detention facilities that could not provide proper treatment. Advocates submitted a report\textsuperscript{19} to the U.N. Human Rights Council as part of the U.S. Universal Periodic Review and a request for a hearing\textsuperscript{20} to the IACHR regarding extrajudicial involuntary deportations of noncitizen patients by U.S. hospitals. The report alleged that the severe restrictions on noncitizen eligibility for public health care, coupled with requirements limiting hospitals’ abilities to discharge seriously ill patients without proper treatment plans, result in hospitals repatriating seriously ill indigent noncitizens. Such repatriations violate the UDHR, ICCPR, CERD, and the Convention on the Rights of Persons with Disabilities. The IACHR process, in addition to providing a vehicle to re-litigate an issue that has already been decided against the noncitizen patient in U.S. courts, also has the benefit of being able to provide a remedy to patients from IACHR-member countries in their countries of origin after being forcibly removed from the U.S. – unlike cases pursued in U.S. courts.

Several organizations have analyzed noncitizen health issues through a human rights lens. Human Rights Watch examined the problems faced by immigrant detainees with mental illness or disability and framed the problems primarily as violations of the right to a fair immigration hearing and the right to freedom from arbitrary detention.\textsuperscript{21}

Participants emphasized the important role health care professionals can play at all levels in promoting respect for human rights for all. Health care provider groups, including for example associations of medical and nursing students, Physicians for Human Rights USA, Partners in Health, the American Medical Association, and the American Psychological Association, take increasingly prominent positions on human rights issues. Because such medical professionals can often be more effective messengers on immigrant health issues at legislative, policy, and administrative levels, immigrants’ rights advocates would do well to partner with them in identifying the issues, gathering data, and recommending best practices.

One participant critiqued the rights-based approach to the problem of limited immigrant access to health care, arguing that the fight to effectuate a universal right to adequate health care is a fight for “the commons,” for the kind of society that we all want to have – not just a struggle for certain groups of people to gain “special” rights or


\textsuperscript{20} Seton Hall University School of Law Center for Social Justice, Request for a General Hearing on Extrajudicial Medical Repatriation of Immigrants from the United States, Feb. 2011, http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/upload/Seton_Hall_Request_for_Hearing_on_Medical_Repatriation-fnl.pdf.

\textsuperscript{21} Deportation by Default, supra note 18.
privileges. Where the rights framework does nothing to break down the “othering” of those marginalized in our society, fighting for this commons provides an opportunity to connect with other people and use the media to build empathy with the cause. It is also a way to surface the latent theme of corporate power, as the fight for the commons is ultimately a fight against privatization, and this framework does a better job than the human rights framework of putting corporate power in the center of the frame. Others countered that a human rights framework is aimed precisely at breaking down categories among human beings in the sense that fundamental human rights belong to all people, regardless of citizenship, nationality, race, gender, class, religious belief, disability, or other status. It is meant to be inclusive of noncitizens rather than to claim “special” rights for them alone.

The Session’s Boston Principles Recommendations:

- Emphasize the inadequacy of health care for people in immigration detention in the U.S.
- Highlight the particular challenges faced by immigration detainees with mental illnesses and persons with disabilities, both in receiving proper care while in detention and in receiving fair hearings during removal proceedings.
- Highlight the health consequences of frequent transfers during immigration detention, including the lack of consistent care and the problem of drug resistance.
- Emphasize that patient dumping is both a human rights violation and a violation of U.S. law and describe its negative effects for all concerned.
Closed Session III: Family Life: Gender, Children and Human Rights in the Home and Community

This session centered on obstacles families of noncitizens face in realizing their human rights in the United States. Three main areas of focus emerged from the discussion: 1) the parent-child relationship, 2) child development concerns, and 3) most effective strategies for noncitizens to advance their children’s rights and rights to family life in this country. Professors Libby Adler and Mary O’Connell of Northeastern University School of Law served as the session’s moderators. Discussion leaders were Professor Paula Aymer, Tufts University (Sociology); Carline Desire, Association of Haitian-American Women in Boston (AFAB); and Professor Jonathan Todres, Georgia State University College of Law.

1. The Parent-Child Relationship and Immigrant Children’s Development

One of the main obstacles to healthy immigrant parent-child relationships and proper child development is the threat of deportation faced by all undocumented immigrants as well as some immigrants who have residence status. The use of deportation as a sanction has had a long history in the United States, dating as far back as 1798 with the Alien Enemies Act and the Alien Friends Act, authorizing the President to expel any dangerous non-citizen from the country. In 1952, the basic structure of the U.S. immigration system was established via the McCarran-Walter Act with a main tenet guaranteeing protection of U.S. citizens’ rights to entry and against deportation from the U.S. Conversely, the same system leaves non-citizens continually vulnerable to deportation, while citizen children face de facto deportation in order to remain with their deported parents.

In 1996, then President Bill Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which went into effect in 1997. The Act concurrently expanded the crimes for which non-citizens could be deported, while narrowing their grounds for leniency, restricting judges’ consideration of individuals’ family relationships, business or property ownership, tax payments, and service in the armed forces.

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23 Id.
24 Id. at 11.
forces.\textsuperscript{26} A 2009 Human Rights Watch Report estimated that approximately 1,012,734 family members had been separated from loved ones by deportation on criminal grounds since 1997.\textsuperscript{27} Over seventy percent of the 501, 827 deportations cases for which the ICE recorded crime data were based on non-violent offenses among both legal and undocumented immigrants.\textsuperscript{28} In addition, processing inefficiencies and low numerical limits for family visas have led to over 4 million family visa applicant backlogs, resulting in visa overstays and delays in visas for lawful permanent residents’ spouses and children living abroad.\textsuperscript{29} One Ninth Circuit judge lamented his inability to protect family relationships in deportation decisions subject to the more punitive 1996 laws, writing in a dissenting opinion: “I pray that soon the good men and women in our Congress will...give us humane laws that will not cause the disintegration of...families.”\textsuperscript{30}

The very real threat of deportation creates a climate of fear within immigrant communities, placing internal stressors on familial relationships. Exacerbating such fears is Section 287(g) of the Immigration and Nationality Act, added as a result of the IIRIRA.\textsuperscript{31} Section 287(g) authorizes the federal government to make agreements with state and local law enforcement agencies, permitting trained state and local officers to perform immigration law enforcement functions including identifying, processing, and detaining suspected immigration offenders they encounter in their daily law enforcement activities.\textsuperscript{32} Consequently, undocumented immigrants living in the United States, particularly those with ties to this country, are constantly trying to remain anonymous and undetected for the sake of their and their families’ livelihoods.

This constant fear of detection in combination with English-language barriers facing some immigrant parents may result in situations in which they rely heavily on their children to serve as translators and to take on other significant adult responsibilities. Children of immigrants, particularly those who are born in the U.S. or who are naturalized, become “language brokers,” acting as middlemen connecting their families to outside systems and resources.\textsuperscript{33} As some participants noted, the accompanying parental disempowerment can send mixed messages to children of immigrants about

\footnotesize{\textsuperscript{26} Id.}  
\footnotesize{\textsuperscript{28} Id. at 32-34.}  
\footnotesize{\textsuperscript{30} Forced Apart by Numbers, supra note 27, at 4.}  
\footnotesize{\textsuperscript{31} 8 U.S.C. § 1357(g).}  
\footnotesize{\textsuperscript{32} Tough, Fair, and Practical, supra note 29, at 9.}  
parental authority and competence. Some sociologists conclude that such children typically assume parental responsibilities of caregiving to their siblings, their parents, or both. 34 This responsibility can have a negative effect on child development, with some children experiencing low self-esteem and low self-efficacy due to feeling overburdened with their care-taking obligations and their parents’ loss of status. 35 Other children may experience the opposite effect, with their confidence growing with their contributions to their family and their inclusion in family coping strategies. 36

The fear of deportation and language barriers may not only diminish parental status, it can also cause mothers to remain in violent relationships. According to a joint report in 2005 by the Family Violence Prevention Fund and Learning Systems Group, the prevalence of family violence among immigrant populations is quite high, with immigration to the U.S. cited as a contributing factor affecting the frequency and severity of abuse experienced by spouses. 37 Numerous domestic violence survivors and practitioners report that batterers often use immigration status to gain power and control over their undocumented partners, refusing to sign necessary documents, and/or threatening to call immigration authorities or return children to their country of origin. 38 One participant noted that both remaining in such violent situations and trying to leave them frequently result in preventing the formation of healthy family structures and have a large impact on immigrant children’s development. However, domestic violence advocates agree that finding a way out of abusive situations is always the safer and healthier choice for families. Nonetheless, although the Violence against Women Act (VAWA) enables abused spouses and children of U.S. citizens or lawful permanent residents to obtain legal immigration status, and U visas allow some non-spouses to obtain legal status, immigrant survivors continually face unique challenges in receiving services to assist them in transitioning from violent homes. 39 These challenges include lack of culturally relevant services or services offered in their native languages, barriers to accessing services due to ineligibility for public benefits which lead to financial hardships and even homelessness, unfamiliarity with the law, and mistrust of the judicial process and social service agencies. 40

Similar obstacles faced by immigrant parents in navigating this country’s educational, health, and legal systems negatively impact their children’s development. Their children’s status as dependents of unauthorized residents, even if the children are citizens by birth, can mire them in poverty and result in unstable living arrangements,

34 Id. at 77.
35 Id. at 78.
36 Id.
38 Id. at 10.
39 Id. at 4.
40 Id. at 7-10.
with the threat of deportation always looming near and parents often too fearful to claim the public benefits for which their children qualify. Researchers Marta Tienda and Ron Haskins find that “even having certifiably legal status is not enough to guarantee children’s access to social programs if parents lack information about child benefits and entitlements, as well as the savvy to navigate complex bureaucracies.” Consequently, immigrant children must endure diminished prospects of assimilation into American society during their crucial formative years. Thus, though they are the fastest growing segment of the U.S. population, their futures remain uncertain, faring worse than their native-born counterparts in socioeconomic status, education, and physical and mental health.

More specifically, many immigrants arriving since 1970 have limited skills and low earnings capacity, resulting in high rates of youth poverty. Childhood poverty correlates with a number of negative adult socioeconomic outcomes, ranging from lower educational achievement and behavioral problems to lower wages in the labor market. Poor childhood health also contributes to lower socioeconomic status in adulthood because “…unhealthy workers are less productive, more costly for employers, and earn less over their lifetimes.” Subsequently, immigrant parents’ low socioeconomic status contributes to poor childhood health outcomes in later generations. In addition to lower family incomes, reduced access to health insurance and medical care services, causing immigrant parents to delay or forgo necessary care for their children, substantially influences immigrant children’s physical and emotional health.

Furthermore, parental education and language barriers may affect immigrant children’s educational accomplishments. Those who live in homes with less-educated, non-English-speaking parents are at risk for developmental delay and poor academic performance upon entering school, leading to increased rates of high school drop-outs. Participants also observed that family instability affects immigrant children’s educational success, pointing to several examples where bright young children turned to criminal activity due to their constant fear of their parents’ deportation, their emotional deterioration, and inability to seek support causing their withdrawal from school. As one participant noted,

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41 Marta Tienda & Ron Haskins, Immigrant Children: Introducing the Issue, 21 Future of Child. 3, 7 (2011), available at http://futureofchildren.org/futureofchildren/publications/docs/21_01_FullJournal.pdf. Children who are lawful permanent residents are also dependent on their parents to pursue naturalization, because minors are not permitted to naturalize on their own.
42 Id. at 3.
43 Id. at 4.
44 Id. at 3-4.
45 Id. at 6.
46 Id. at 11.
47 Id. at 10.
48 Id. at 10.
49 Id. at 11.
50 Id. at 4, 7.
the dependency roles between immigrant parents and their children highlights the interrelationship among human rights and the trickle down effect on these rights when one right is denied: immigrant children’s lower health care accessibility results in sickness and missing school; school absences are unexplained for fear of exposing their parents to deportation, resulting in a lack of support from school authorities; and lack of support and lower academic performance due to absences and stress at home leads to greater numbers of drop-outs with few skills to enter the workforce, thus making immigrant children prime targets of exploitation in the child labor and sex trafficking industries.51

Institute participants agreed that children should be grouped into various age subsets when considering how to frame children’s rights issues concerning child development, and discussed the time-sensitive nature of ensuring children achieve their rights. Concerns regarding young children centered on the importance of early childhood development, and barriers to accessing early learning programs including preschool. Participation in center-based care and formal preschool programs may offset developmental delays immigrant children experience, having been shown to produce significant short-term benefits that may extend into adolescence and beyond.52

Structural and cultural barriers immigrant families face in accessing early care and education (ECE) programs include affordability, availability, distrust of government programs, bureaucratic complexity, language barriers, and preferences for parental care at home.53 Recommendations to overcome such challenges include making preschool attendance universal, as some states have done, or increasing preschool availability based on residence in targeted communities.54 Additionally, altering the structure of publicly subsidized programs as well as their marketing schemes could minimize language barriers and cultural sensitivities, and decrease informational gaps and misperceptions regarding government services and ECE programs.55

Participants also emphasized the importance of the right of young immigrant children to unstructured play, viewing it as crucial to developing children’s conflict negotiation skills and their ability to think creatively. Too often, play space is restricted for these children due to lack of housing rights and access to financial resources, again highlighting the interrelationship among human rights and their effect on each other.

On the other hand, concerns regarding problems faced by young adults focused on barriers to higher educational opportunities, often resulting in criminal involvement

52 Tienda & Haskins, supra note 41, at 7.
53 Id.
54 Id.
55 Tienda & Haskins, supra note 41, at 7.
among immigrant children at this age who face potential deportation for adult charges. The 1982 Plyler v. Doe Supreme Court decision guaranteeing K-12 education for undocumented immigrant youth is inapplicable to post-secondary schooling, which is neither compulsory nor free.\(^{56}\) Several states, including Texas and California, have passed legislation extending in-state tuition to undocumented children admitted to public institutions, while other states interpret the IIRIRA to explicitly preclude admitting undocumented youths.\(^{57}\) Other attempts to assist the advancement of young adult immigrants within American society include the federal Development, Relief, and Education for Alien Minors (DREAM) Act, proposing legislation which would create a pathway to citizenship for undocumented youth meeting certain criteria, including completing two years of postsecondary education.\(^{58}\) Those supporting higher education for immigrant children argue that it is essential to foster social cohesion, bolster their economic mobility, and increase their contributions to the nation’s economy and to federal and state revenues.\(^{59}\) However, political barriers, anti-immigrant sentiments, and competition between the youth and the elderly for scarce societal resources like education funding, Social Security, and government health benefits in these economically hard times, prevent immigrant children in this country from realizing their human rights.\(^{60}\)

2. Immigrant Mobilization and Organization Strategies

Overcoming challenges to achieving immigrants’ economic, social and cultural rights, particularly with a declining proportion of the federal budget for programs enhancing health care access and youth educational opportunities, is a persistent uphill battle.\(^{61}\) Session participants agreed that political mobilization of immigrant groups combined with the support of experts, social workers and legal advocates is necessary to bring the issue of immigrants’ right to maintain healthy families to the forefront at all levels of federal, state and local government.

Sociological research demonstrates that community-based, ethnically or racially organized mobilization campaigns are the most effective means of enhancing minority political participation, especially among Blacks and Latinos.\(^{62}\) One participant emphasized the importance of ethnic organization in order to unify immigrant groups, increase the number of minority voters, and to aid in providing culturally relevant services to immigrant populations. Often, community organizations combining political

\(^{57}\) Tienda & Haskins, supra note 41, at 14.
\(^{58}\) Id. at 8, 14-15.
\(^{59}\) Id. at 14.
\(^{60}\) Id. at 6-7.
\(^{62}\) Id. at 152.
activism with social welfare support are particularly successful in promoting civic involvement among members of immigrant communities.\(^{63}\) Proposals for creating a unified identity among immigrant groups included maintaining practices unique to different ethnic populations such as learning native languages. The participant asserted that such an understanding of the various cultural norms among diverse immigrant communities was imperative for their advancement.

Another participant suggested that organizing immigrant communities using an ethnic and minority cooperative model might be an effective approach to political mobilization.\(^{64}\) She proposed that often ethnicity can be a divisive rather than a unifying factor in communities. She spoke to encourage cooperation across ethnic distinctiveness. Focusing on the needs of children and their families in black and ethnic immigrant communities, she contended that racism in the United States has organized minorities - people of color - in minority communities. Even when minority families have different racial and ethnic histories in the United States, and whether they are first or second generation immigrants, often, they are confronted with similar disadvantages.\(^{65}\) Ethnic immigrants and African-Americans experience similar socio-economic inequalities and marginalization, for example, in housing, jobs, education, and access to decent health care. These disparate groups have much in common, and could get much more accomplished in their neighborhood schools and communities if they could form a united front. The speaker asserted that ethnic differences are in danger of replacing racial differences in the United States as people of color compete with each other over limited resources.\(^{66}\) The speaker suggested that much more might be accomplished if marginalized people participated in politics by joining forces and confronting the seats of power to have the needs of their children and communities met. Ethnic difference has emotional and psychological significance to groups and individuals within the wider society that ignores them or treats them as unimportant.\(^{67}\) An overarching issue confronting minorities is their lack of concerted political power at community, state and national levels.\(^{68}\) The speaker suggested that the answer might be in minority cooperation rather than intense competition as all groups struggle to acquire what is needed for their families and communities.

Additionally, participants observed the need to raise awareness about the importance of ensuring immigrants’ right to family life and children’s human rights among lawmakers and in mainstream communities.

\(^{63}\) Id. at 152.


\(^{65}\) Id.


\(^{68}\) Jennings, *supra* note 64.
In order to reach governmental entities, participants recognized the need to organize not only immigrant groups and human rights advocates, but for other health care professionals to support the plight of immigrants in the U.S. Psychologists and doctors would be able to provide evidence regarding the lack of access to education, health care, financial means and family stability on the physical, mental and emotional development and well-being of immigrant children.

Finally, conference participants discussed the need for legal advocacy to hold the United States accountable for protecting the human rights of children in immigrant families. Participants highlighted the importance of employing an ESCR approach in immigration courts in order to demonstrate how severely immigrant children’s lives are affected by a denial of economic, social, and cultural rights. Economic insecurity too makes immigrant children vulnerable to the child labor and sex trafficking industries, gender discrimination places young girls and mothers at an even higher risk for sexual exploitation, and separation from their birth parents impedes immigrant children’s cultural identity formation, all interfering with their education and proper development.

Although the U.S. has resisted becoming a party to various ESCR conventions, one participant proposed using other international instruments to which the U.S. is a party to promote this country’s obligations to advance human rights principles.

In addition, another participant pointed to the persuasive authority of the Convention on the Rights of the Child (CRC), which the U.S. has signed, but not ratified, protecting children’s right to develop to their fullest capacity, the right to know and be cared for by their parents, the right to health care access, the right to education and cultural development, and the right to protection from exploitation. Even such unratified standards can be used to guide policies and strategies aimed at child and family well-

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69 See Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. (specifically art. 6(2): “States Parties shall ensure to the maximum extent possible the survival and development of the child”; art. 3(2): “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents...”); art. 9(1): “States Parties shall ensure that a child shall not be separated from his or her parents against their will...”; art. 24(1): “States Parties shall strive to ensure that no child is deprived of his or her right of access to...health care services”; art. 28(1): “States Parties recognize the right of the child to education...”; art. 29(1)(c): “States Parties agree that the education of the child shall be directed to: the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate...”; and art. 32(1): “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or be harmful to the child’s health or physical, mental, spiritual, moral or social development”). See also Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391 (1996); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, GA Res. 54/263, Annex H, UN Doc. A/RES/54/263 (May 25, 2000), available at http://www.unhchr.org/refworld/docid/3ae6b38bc.html.
being. Using creative strategies to promote the rights of immigrant children and their families, participants agreed, provides some hope that they will one day be fulfilled.

The Session’s Boston Principle Recommendations:

- Include the right to child subsidies for early childhood development programs such as preschool education.
- Recognize the negative impact child language brokering can have on the parent-child relationship and child development.
- Disaggregate and specify children’s human rights needs and concerns by developmental age group.
- Include the importance of children as organizers and actors in the political mobilization, economic life, and cultural and social life of immigrant communities consistent with their age and maturity.
Closed Session IV: At the Intersection: Non-Discrimination, Equality and the Identities of Immigrants

Participants in this session focused specifically on discrimination and identity-status within and outside immigrant communities as the root of many challenges faced by noncitizens and their communities. Accordingly, they highlighted the importance of bringing an “intersectional” or “multidimensional” approach to the analysis of discrimination, organizing and empowering immigrant groups and their allies.

The session was moderated by Professors Hope Lewis and Margaret Woo of Northeastern University School of Law. Lead discussants were Dimple Abichandani, Proteus Fund; Omar Jadwat, Immigrant Rights Project, American Civil Liberties Union; Nancy Kelly, Harvard Immigration and Refugee Clinic of Harvard Law School and Greater Boston Legal Services; and Professor Susan Ostrander, Department of Sociology, Tufts University.

1. Anti-Immigrant Sentiments and Barriers to Achieving Immigrants’ Human Rights

Noncitizens in the United States are often denied their right to be free from discrimination in their daily lives, and face unequal opportunities in achieving their economic, social and cultural rights. During difficult economic times, immigrant groups may be unfairly scape-goated as competition for jobs or social benefits increases. During better times, they may be exploited for low-wage labor, targeted as “security threats,” or isolated as “exotic others.”

Nevertheless, citizenship status is not the sole basis for discrimination; many immigrants face numerous forms of discrimination, including those based on race, gender, sexual orientation, language, religion, disability, age, and national origin. According to a report by a special working group of the Committee on the Elimination of Racial Discrimination (which oversees the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)), “the United States, through both its direct and indirect action, has failed in its obligations under the Convention to guarantee the rights of immigrants to be free from discrimination on the basis of race, ethnicity, national origin and ancestry, and to recognize and address the multiplicities of discrimination immigrants face and the intersection of gender, race, national origin and citizenship discrimination.”

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Women noncitizens experience unique adverse effects of gender and citizenship discrimination. Noncitizen women who are married or who have children may stay in abusive relationships longer for fear of their own deportation, that of their partners, or separation from their children. In addition, a 2003 survey found that noncitizen women are four times more likely to be uninsured than their U.S.-born counterparts, thus creating a barrier to treatment and poor health outcomes. More than 3 million undocumented women and children are ineligible for health care. Pregnant women from immigrant communities have increasingly become targets for scrutiny by elected officials and government agencies due to biases and unfounded fears about the use of citizen children to gain residency status. Women and children comprise a large portion of the 17,500 people who are trafficked to the United States annually, remaining invisible as caretakers, agricultural workers, or workers in small factories. Trafficking victims may fear seeking redress in the U.S. because of barriers to justice exacerbated by gender, racial, national origin, language, and citizenship status discrimination.

Both male and female racial and ethnic minorities have felt the discriminatory backlash of anti-immigrant sentiments. Given the long history of racism in the United States and the legacies of slavery and segregation, African and African-descended immigrants face racial discrimination as well. For example, members of Jamaican and Haitian immigrant communities have been disparately targeted for detention and removal proceedings.

Many Haitian noncitizens were initially unsuccessful in securing Temporary Protected Status (TPS) despite the provision of TPS to other nationalities following natural disasters in their countries. However, given the outpouring of popular sympathy following the January 2010 earthquake in Haiti, the Department of Homeland Security (DHS) granted TPS to Haitian nationals living in the U.S. as of January 12, 2010, allowing those without authorization to live and work in the country for eighteen months provided they lack criminal records and until Haiti’s government and infrastructure can function effectively.


72 Immigrant Rights, supra note 70, at ¶ 29. This health care deficit violates Article 5(e)(iv) of ICERD guaranteeing all persons “without distinction as to race, color, or national or ethnic origin...the right to public health, medical care, social security and social services.”

73 Immigrant Rights, supra note 70, at ¶ 42.

74 Immigrant Rights, supra note 70, at ¶ 44.

75 Immigrant Rights, supra note 70.

76 Immigrant Rights, supra note 70, at ¶ 6, 12-13.

Other immigrant groups have also been targets of discrimination. For example, post-Hurricane Katrina, Vietnamese-American immigrants who lost their lives and homes were largely ignored by the media, and numerous Latino and other immigrant workers were denied labor protections during reconstruction efforts. Employer recruitment of cheap immigrant labor in Katrina’s aftermath served to deepen underlying racial, cultural, and linguistic tensions between native-born and immigrant communities.

Post-9/11 targeting of noncitizens (and citizens) who are Muslim, Sikh, Arab, or South Asian has been extensive in both public and private sectors. U.S. Immigration Customs and Enforcement (ICE) raids purportedly aimed at apprehending undocumented individuals and individuals with criminal convictions can also have devastating impacts on entire immigrant communities. Because some such raids may involve targeting a disproportionate number of ethnic minorities in relation to those actually charged with violations, resulting in the abuse, arrest, and detainment of many legal U.S. residents based on their ethnicity. Such indiscriminate targeting by race, ethnicity, or language may constitute violations of ICERD.

Participants observed that deep-rooted anti-immigrant sentiments have existed in the United States throughout its history, most recently reflected in the 1996 IIRIRA and post-9/11 national security measures. As a result, immigrant detentions increased 400 percent from 5,532 in 1994 to 27,500 in 2006, often arbitrary in nature and for indefinite periods. Additionally, the IIRIRA authorized the “expedited removal,” or immediate deportation, of persons arriving in U.S. airports or within U.S. borders without proper travel documents. Consequently, asylum seekers are often uninformed of their right to interviews determining whether they have a credible fear of torture or persecution in their native countries, and thus they are also denied access to asylum hearings before an immigration judge.

Congress also enacted a filing deadline requiring asylum seekers to establish by “clear and convincing” evidence that they filed their asylum applications within one year of arriving in the United States, or that they meet one of two exceptions. This has been

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78 Immigrant Rights, supra note 70, at ¶ 17-19.
79 Immigrant Rights, supra note 70, at ¶ 22.
81 One participant raised the example of the Japanese Internment during World War II.
83 Immigrant Rights, supra note 70, at ¶ 77, 80.
84 Immigrant Rights, supra note 70, at ¶ 81.
85 Id.
86 National Immigrant Justice Center, Human Rights First, & Penn State Law [hereinafter NIJC, HRF, & PSL], The One-Year Asylum Deadline and the BIA: No Protection, No Process; An Analysis of Board of
particularly damaging for those hoping to establish asylum claims, resulting in the
deporation of many refugees with well-founded fear of persecution, and contrary to
the United States’ commitment to protect refugees under the Protocol relating to the

Since September 11, 2001, the U.S. government has instituted federal laws and policies
limiting Muslim, Sikh, Arab, and South Asian non-citizens’ access to due process, while
at the same time elevating fears and mistrust of members of those ethnic and religious
groups as well as people who are simply perceived to be members of such groups based
on skin color, dress, or accent. 88 The USA PATRIOT Act of 2001 expanded the
government’s power to search citizens’ and noncitizens’ records, property, and
correspondence, and authorized detaining non-citizens on a mere suspicion of terror
indefinitely. 89 The REAL ID Act of 2005 heightened the standard of proof for asylum
grants, and allows DHS to bar admitting aliens into the U.S. if deemed to provide
“material support” to groups defined as terrorist organizations even if they bear no
personal responsibility for the group’s activities. 90 Such national security terrorist
tracking measures, one participant noted, have engendered fear in donating to Muslim
charitable organizations even for the legitimate purposes of supporting poor peoples’
access to food, housing, and health care in the U.S. and in predominantly Muslim
countries. The federal government has also expanded post-9/11 administrative policies
regarding alien registration, targeting Muslim and Arab men with programs such as the
National Security Entry Exit Registration System (NSEERS) authorizing the detainment of
temporary foreign visitors from certain countries who fail to register upon arrival to and
departure from the U.S. 91 Such policies, along with heightened scrutiny of individuals
perceived to be “Muslim- or Arab-looking” in airports, serve to legitimize immigrant
profiling based on race, national origin, and religion. 92

Since 2006, Board of Immigration Appeals (BIA) decisions further restrict asylum grants
by imposing “social visibility” and “particularity” requirements: asylum seekers claiming
membership of a particular social group must not only demonstrate a common
immutable or fundamental characteristic among group members, but must also prove
that the group is visible or recognizable in society, and that the group is clearly defined

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http://www.ohchr.org/english/law/protocolrefugees.htm; NIJC, HRF, & PSL, Asylum Deadline and BIA,
supra note 86, at 2.
88 Immigrant Rights, supra note 70, at ¶ 84.
89 Immigrant Rights, supra note 70, at ¶ 84
90 Id. at ¶ 85.
91 Id. at ¶ 86.
92 Id.
such that group members are readily identifiable.\textsuperscript{93} Participants also noted that U.S. courts additionally look not only to the harm suffered by applicants to determine whether to grant asylum, but to the perpetrator’s motivations in inflicting harm to the applicant. These restrictions have construed American asylum law much more narrowly than that of international asylum law, reflecting anti-immigrant sentiments harbored by the public and our elected officials at the expense of immigrants’ human rights. In addition, many individuals’ eligibility for protection is constrained by the growing number of criminal offenses defined as “particularly serious crimes.”\textsuperscript{94}

Federal regulations allowing individuals to pursue claims under Article 3 of the Convention against Torture (CAT) for protection from refoulement\textsuperscript{95} are more restrictive than international law as well. They require the claimant to show that “it is more likely than not that he would be tortured,” while CAT only requires that there be “substantial grounds for believing that [the claimant] would be in danger of being subjected to torture” if returned.\textsuperscript{96} In addition, the U.S. does not extend refoulement protection to persons fearing torture by private entities uncontrolled by government.

Numerous state and local laws and policies, like federal national security laws, reflect rising anti-immigrant sentiments in the United States. Local law enforcement are increasingly entering into agreements with DHS, known as Memoranda of Understanding, to receive money and training to enforce U.S. immigration laws.\textsuperscript{97} This delegation of authority has resulted in further isolating at-risk members of immigrant communities such as domestic violence and trafficking survivors due to deportation fears, discouraging immigrant community members from assisting in community policing efforts, and in law enforcement’s use of policies resulting in discriminatory profiling.\textsuperscript{98} Participants noted that some local laws provide greater restrictions on non-citizens’ ability to advance within American society than even INS regulations. For example, some state trespassing laws include “unlawful presence” as a criminal offense even though it constitutes a civil violation under federal immigration laws.\textsuperscript{99}


\textsuperscript{94} See Convention Relating to the Status of Refugees art. 33(2), July 28, 1951, 189 U.N.T.S. 137, available at http://www.ohchr.org/english/law/refugees.htm (stating that “[t]he benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”); Immigrant Rights, supra note 70, at ¶ 82.

\textsuperscript{95} See Convention Relating to the Status of Refugees art. 33(1), 189 U.N.T.S. 137 (stating that “[n]o Contracting State shall expel or return (“ refouler ”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”).

\textsuperscript{96} Immigrant Rights, supra note 70, at ¶ 82.

\textsuperscript{97} Id. at ¶ 69.

\textsuperscript{98} Id. at ¶ 69-73.

\textsuperscript{99} American Civil Liberties Union [hereinafter ACLU], Immigrant Rights Project Issue Brief: Criminalizing Undocumented Immigrants, 1 (2010), available at
Undocumented presence in violation of U.S. immigration laws is criminally punishable only if an individual returns without permission to the United States after he has been previously formally removed.\textsuperscript{100} Using federal law enforcement resources to target undocumented immigrants for criminal prosecutions consumes resources needed to investigate dangerous crimes in this country, posing serious consequences for our public safety.\textsuperscript{101}

In Lozano v. City of Hazleton,\textsuperscript{102} immigrants and immigrant rights advocates challenged a 2006 City of Hazleton, Pennsylvania ordinance known as the Illegal Immigration Relief Act (IIRA), enacted as a result of higher crime rates and an economic downturn in the city. Blaming the undocumented immigrant population for these problems, city officials sought to impose license suspensions and monetary penalties on landlords and businesses for renting to and hiring undocumented immigrants.\textsuperscript{103} The federal district judge held that the IIRA was preempted by federal law and therefore unconstitutional, and the Third Circuit Court of Appeals in Philadelphia upheld the ruling.\textsuperscript{104} However, in light of a recent Supreme Court decision upholding the Legal Arizona Workers Act of 2007 (LAWA) mandating that all employers use the federal E-Verify database to track the immigration status of employees,\textsuperscript{105} the U.S. Supreme Court remanded Lozano to the Third Circuit for further review.\textsuperscript{106} The Third Circuit subsequently vacated its mandate declaring the IIRA unconstitutional, placing the case back before the court, and preventing immigration advocates from citing its previous decision when opposing similar illegal immigration laws across the country.\textsuperscript{107}

In United States v. Arizona,\textsuperscript{108} the U.S. Department of Justice challenged key anti-immigrant provisions of Arizona’s Support our Law Enforcement and Safe Neighborhoods Act, introduced as Arizona Senate Bill 1070 (SB 1070),\textsuperscript{109} and signed by Arizona’s Governor Jan Brewer on April 23, 2010. Although polls reflected that a greater percentage of Americans supported the law to curb problems perceived to be


\textsuperscript{100} Id. See also 8 U.S.C. § 1326 (2006)(stating that any individual previously “deported or removed” who “enters, attempts to enter, or is at any time found in” the United States without authorization may be punished by imprisonment up to two years).

\textsuperscript{101} ACLU, Criminalizing Undocumented Immigrants at 4.

\textsuperscript{102} Lozano v. City of Hazleton, 496 F.Supp.2d 477 (M.D. Pa. 2007).


\textsuperscript{104} Lozano v. City of Hazleton, 620 F.3d 170 (3d Cir. 2010), cert. granted, vacated, and remanded, No. 10-772, 2011 WL 2175213 (June 6, 2011), vacated by the Third Circuit on July 29, 2011.


\textsuperscript{106} Lozano v. City of Hazleton, No. 10-772, 2011 WL 2175213 (June 6, 2011).


associated with illegal immigration, many worried its broad provisions would lead to racial profiling and deprive legal immigrants and citizens of their civil rights. 110 Negative reactions to the bill sparked protests and demonstrations across the country, as well as boycotts of Arizona businesses. 111 In July 2010, a federal judge for the U.S. District Court for the District of Arizona in Phoenix granted a preliminary injunction regarding many controversial provisions of SB 1070, including requiring police to check the immigration status of all those arrested and stopped if suspected to be here unlawfully, mandating detention, even for minor offenses, of those arrested who cannot verify their legal status, and criminalizing non-citizens failure to register or failure to carry registration documents. 112 The judge held that such provisions would overburden federal agencies with an influx of cases from Arizona, diverting resources from other federal enforcement priorities, and could result in the wrongful arrest of legal immigrants. 113

Arizona officials appealed the decision to the United States Court of Appeals for the Ninth Circuit in San Francisco, which upheld the district court ruling. 114 At the time of writing, oral arguments on federal preemption issues have been heard and a decision is pending before the U.S. Supreme Court.

At the institute session, one participant noted specific discriminatory dangers that Arizona citizens and legal residents could face if Governor Brewer’s appeal is successful: to meet reasonable suspicion to stop individuals to prove their legal status, authorities can rely on their inability to speak English, proximity to undocumented individuals, failure to carry U.S. issued documents on their person at all times, or presence on known trafficking routes which include many highways and minority neighborhoods in Arizona. Thus, although SB 1070 mandates that race or ethnic background cannot be the sole factor for reasonable suspicion to stop an individual, fear of the law’s discriminatory impact is legitimate. With other states following suit, participants agreed that we may see increases in conflation of victims of crimes with perpetrators, as well as further infringements on the everyday aspects of immigrants’ lives, including artificial interference with their rights to enroll in school, apply for housing, and receive medical attention.

Session participants observed that discriminatory beliefs and acts, exacerbated by federal and local laws, deprive immigrants, both legal and undocumented, full political participation within their communities. One participant conducted interviews of several immigrant leaders who discussed the discriminatory barriers they face day-to-day: unanswered police calls for assistance, ostracism in primarily non-immigrant neighborhoods, disapproval of speaking non-English languages, inability to vote in local

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111 Id.
112 United States v. Arizona, 703 F.Supp.2d.
113 Id.
114 United States v. Arizona, 2011 WL 1346945 (9th Cir. 2011).
elections important to immigrant advancement, and difficulties breaking through pre-existing local power structures. The resulting political disempowerment and feelings of insecurity create daunting obstacles for immigrants in realizing their basic human rights.

2. Immigrant Organizing Strategies

With increasing anti-immigrant sentiments pervading U.S. popular culture and politics, session participants suggested using alliance-building strategies as an effective tool to form coalitions among immigrant groups in advocating for their rights. Various organizing strategies focused on encouraging different communities to envision common goals. One participant offered the example of the Inner-City Muslim Action Network (IMAN), a Chicago group uniting and mobilizing Arab and African American Muslims using human rights report cards to document their access to basic necessities such as health care and education. IMAN’s stated objective is “to foster a dynamic and vibrant space for Muslims in Urban America by inspiring the larger community towards critical civic engagement exemplifying prophetic compassion in the work for social justice and human dignity beyond the barriers of religion, ethnicity, and nationality.”

Another participant referenced the union of immigrant women’s rights activists and human rights advocates under a common gender identity in their efforts for rape to be recognized as a form of torture. Others suggested mobilizing immigrant groups by uniting those who have previously struggled to achieve their rights in this country with current struggling groups who can learn from the lessons of the past.

3. Effective Legal Strategies

Although other minority groups used a civil rights framework in advancing their rights in the United States, participants agreed immigrant rights advocates can also effectively use a human rights framework for support in an increasingly globalized world. International treaties and agreements such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Universal Declaration of Human Rights (UDHR) are increasingly being used in

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arguments by immigration lawyers, whether the instrument is binding on the U.S., or has only persuasive authority.

Further, domestic courts may use international law for instructional purposes. One participant noted the use in a First Circuit Court of Appeals dissent of the CRC and the best interests of the child standard in determining whether to grant asylum to undocumented parents.117 With regard to domestic law, another participant reiterated the usefulness of the Supremacy Clause and federalism doctrine in countering local anti-immigrant policies.

Finally, there was lively discussion about a participant’s suggestion regarding “social citizenship.” Among other things, the participant proposed that alternatives to standard definitions of “civic participation” should be explored. For example, some cities and localities have allowed all members of affected communities to vote on issues concerning them rather than tying voting rights solely to citizenship status. This expands the definition of “citizen” to “community member” and highlights both rights and duties associated with participation in society. Through employing diverse organizing schemes as well as human rights legal strategies, participants hoped immigrant groups can develop a more inclusive approach to increase political participation within their local communities. They can then more effectively influence local government to grant them the fundamental rights and freedoms that belong to all in a democratic society.

The Session’s Boston Principles Recommendations:

- Expand the right of political participation to include noncitizen participation in public life—social citizenship.118
- Use an “intersectional” or “multidimensional” approach to discrimination against noncitizens that takes account of their complex identity status. Take account of special impacts of discrimination against noncitizens in certain at-risk groups such as women, sexual minorities, children, persons with disabilities, religious minorities, language and ethnic minorities, and indigenous peoples.
- Foster cross-group communication, solidarity, and strategic coalitions to create effective legal, political and social change.

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Public Roundtable Session II: Bringing Human Rights Home to Immigrant Communities

This session centered on developments concerning immigrant issues in the Massachusetts area, highlighting local scholars’ and advocates’ efforts and progress in supporting U.S. immigrants in their struggle to achieve basic human rights. Participants shared opinions regarding strategies to improve and benefit such advocacy, concluding that the best outcome for immigrant advancement could be accomplished using a human rights framework.

Aarti Shahani, independent journalist and Soros Public Service Fellow, Kennedy School of Government, Harvard University served as the session’s moderator. Discussion leaders were Eva Millona, Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA) & the Governor’s Advisory Council on Refugees and Immigrants; Salvador Reza, Tonatierra Community Development Institute; Rinku Sen, Applied Research Center & ColorLine; Professor Michael Stein, Harvard Project on Disability, Harvard University; and Professor Paul Watanabe, Institute for Asian American Studies, University of Massachusetts Boston.

1. Immigrant Advocacy in Massachusetts

Although the immigration debate has been highly politicized, capturing the nation’s attention for a number of years, state and local advocates across the country have been working in the background to bring some perspective to the conversation. One such local group, founded in 1987 and comprised of over 140 organizations, is the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA).119 MIRA works to promote the rights of immigrants and refugees through policy analysis, institutional organizing and support of immigration advocates, training and leadership development in immigrant communities, and educating the public regarding foreign-born individuals living in the United States.120 MIRA’s awareness-raising campaigns include literature emphasizing the importance of enabling undocumented students to attend colleges and universities in order to become productive citizens of American society, while simultaneously increasing state revenues from tuition fees.121 Its members also advocate for the DREAM Act, as well as for the passage of a bill allowing undocumented high school students to pay in-state tuition rates, increasing higher education’s

120 Id.
affordability and accessibility.\textsuperscript{122} At the time of drafting, the Massachusetts Legislature had re-filed an in-state tuition bill for undocumented youths.\textsuperscript{123} However, supporters in the past have prioritized other agendas, resulting in the bill’s failure to pass in the senate. The MA senate also failed to reach consensus in authorizing the DREAM Act. Acknowledging that such educational benefits, as well as other immigrant and refugee entitlements, will not be realized without political mobilization, MIRA organizes a Get Out the Vote campaign, educating the local community on immigrant and refugee issues so that they may make informed decisions when participating in the democratic process.\textsuperscript{124} The coalition also registers newly sworn-in U.S. citizens at their oath ceremonies, striving to close the voting registration gap between naturalized citizens and those who are native-born.\textsuperscript{125}

Furthermore, under Massachusetts Governor Deval Patrick’s Executive Order 503 launching the New Americans Agenda (NAA) in 2008, MIRA formed a partnership with government, non-profit, and community organizations to develop a series of policy recommendations promoting the integration of immigrant groups into the civic and economic life of the Commonwealth.\textsuperscript{126} The main principles of the NAA’s 131 recommendations focus on integrating immigrants using English-language training, providing basic and advanced education for immigrant children and adults, giving them access to a broad range of state services, and protecting them from discrimination.\textsuperscript{127} MIRA continues to push the project’s stakeholders to support its execution as the Massachusetts community consistently benefits from a productive and indispensable immigrant workforce.\textsuperscript{128}

Such a workforce is certainly valued under the American concept of productivity. Yet, this idea of what constitutes a “productive American citizen” has not only been used to

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{122}] Id.
\item[\textsuperscript{123}] Id.
\item[\textsuperscript{125}] Id.
\end{itemize}
\end{footnotesize}
positively portray the “model immigrant,” but has also been used to discriminate against them. For example, immigrants with disabilities are increasingly being detained, and denied legal immigration status.

Members of the Harvard Project on Disability (HPOD), recognizing the uphill battle disabled individuals fight to achieve equality, support the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and worked to compile a ratification package.\(^{129}\) The HPOD promotes an understanding of the human rights enshrined in the CRPD through training human rights advocates and arming disabled persons with knowledge of their rights to encourage self-advocacy.\(^{130}\) One goal of disseminating this information is to inspire a reconceptualization of who can be a “productive citizen,” and to counter notions of disabled immigrants as public charges.

A participant noted that international advocates have used the CRPD’s provisions in immigration cases, achieving particular success in asylum appeals. Articles which have been strategically used to support the rights of immigrants with disabilities include:

- Article 11 entitling them to protection in situations of risk such as armed conflicts, humanitarian emergencies, and natural disasters;
- Article 12 affording persons with disabilities equal recognition before the law;
- Article 13 guaranteeing immigrants with disabilities access to justice during all legal proceedings;
- Article 18 recognizing the right of persons with disabilities to liberty of movement and freedom to choose their nationality and residence on an equal basis with others, and their right to immigration proceedings; and
- Article 32 encouraging international cooperation to uphold the convention.\(^{131}\)

Although U.S. President Barack Obama signed the CRPD, the United States has yet to ratify the convention.\(^{132}\)

2. Advocacy Strategies

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\(^{130}\) Id.


Considering the roadblocks to local advocacy efforts, session participants discussed strategies to unite Americans in support of immigrant advancement, focusing primarily on language-use and message-framing to reach both immigrant and native-born communities. They agreed that moving beyond past slogans, and using a human rights scheme to frame immigrants as humans, not outsiders, deserving of dignity and desiring to be part of American society, could be successful in community-building during these harsh economic and political times. Some suggested examining political agendas, determining which campaigns had the most to gain from community division through racist and anti-immigrant messages. Attempting to counter such themes with positive imaging of migrating as distinctly American and accurately describing immigrants as an American tradition could reveal the true purpose of deceptive political marketing, promoting societal unity instead.

Participants also discussed strategies to further empower immigrants and mobilize them to go to the voting polls, demonstrate in Washington D.C., and encourage their citizen co-workers, friends, and family members to lobby on their behalf. One participant felt that past immigrant rights efforts have placed too much emphasis on legislative and technical legal fights in lieu of attending to clarifying immigrant issues for both immigrants themselves and the American public. Making such topics transparent and easier to understand may motivate immigrants to become more civically engaged, and bring those who hide their undocumented status from shame and fear out of the shadows.

One such effort to empower undocumented immigrants to join the struggle in achieving their rights is the Applied Research Center’s and Colorlines.com’s “Drop the I-Word” Campaign. The campaign’s mission is to eradicate the use of the word “illegals,” referring to “illegal immigrants” or “illegal aliens,” from public discourse. The individuals and communities who comprise the campaign believe “illegals” is a racially charged slur aimed at dehumanizing and discriminating against immigrants and people of color, enabling the denial of their basic human rights. Rejecting the label may help dissuade Americans from easily ignoring the unjust application of laws immigrants face, encouraging them to see undocumented individuals as human beings entitled to equality. Some participants felt that in addition to focusing on entitlements immigrants deserve, appealing to the self-serving segments of society by highlighting the economic, social and cultural benefits immigrants provide may be useful in advancing their cause. The roundtable discussants ultimately concluded that an inclusive strategy, bringing native-born and non-native-born Americans together via human rights framing, was the most effective method in strengthening immigrant rights both on local and national levels.

Another participant discussed the importance of serious political engagement by members of immigrant communities during major election years and in between. He also emphasized the important impact of globalization. Policymakers and legislators must be educated about the fundamental human rights of immigrants, but they must
also be made aware of how immigrants contribute positively to the U.S. and global economy. Members of immigrant communities, who are growing beyond “minority” status in the U.S., must continue to organize to effectively consolidate and express their voting power and other means of political influence within the U.S. to create a more just policy toward immigrants and a more just U.S. foreign policy. Just as immigrants maintain important economic and cultural ties with communities in countries of origin, they must also link with broader struggles for human rights in home countries and throughout the world.
Closed Session V: Sustainable Communities: Supporting Decent Work, Housing, Health and Anti-Poverty Strategies

Session participants discussed the increasing blame Americans are placing on undocumented immigrants for the current U.S. economic crisis, versus recognizing benefits immigrant workers provide to this country. In addition, they suggested ways in which a human rights framework can be used to advance immigrant rights and thereby strengthen the U.S. economy.

Moderators for this concluding session were Professor Rashmi Dyal-Chand and Jane Moisan ’11 (PHRGE Fellow), Northeastern University School of Law. Lead discussants included Cecelie Counts, AFL-CIO; Maria Foscarinis, National Law Center on Homelessness and Poverty; Rebecca Johnson, Urban Ecology Blog and Sarah Lawrence College; Sarah Paoletti, University of Pennsylvania School of Law and US Human Rights Network UPR Project; and Rocio Saenz, SEIU Local 615.

1. The Current U.S. Economy and Anti-Immigrant Sentiments

The global “Great Recession” beginning in 2007 has led to rising economic hardships in the United States, including persistent unemployment, declining housing values, and escalating federal debt.\(^{133}\) Although the nation’s gross domestic product (GDP) rose slightly in the second quarter of 2011,\(^{134}\) the unemployment rate remains above nine percent.\(^{135}\) As a result, participants concurred that struggling Americans have turned to more insular, rather than global, targeting undocumented immigrants as part of the cause for the United States’ economic decline and taxpayer suffering.

Participants agreed that the current economic situation necessitates addressing anti-immigrant sentiments with actual facts regarding immigrant contributions to American society. According to a June 2007 report issued by the President’s Council of Economic Advisors (CEA), immigrants fuel U.S. economic growth and have a positive overall effect on native-born American workers’ average wages and incomes by filling in gaps in the low-skilled labor markets, allowing higher-skilled workers to increase their


productivity.\textsuperscript{136} Studies have shown that immigrants also have an overall positive effect on the employment rates of native-born Americans. A 2000-2004 Pew Hispanic Center study found a positive correlation between foreign-born population increases and native-born worker employment in 27 states including immigrant destination states, as well as the District of Columbia.\textsuperscript{137} Although state and local governments primarily bear the fiscal burden of providing social services such as health care and education to undocumented immigrants, research demonstrates that most non-citizens are ineligible for the majority of welfare programs, underuse public benefits, and generate greater public tax revenues than public costs over time.\textsuperscript{138}

A 2010 Immigration Policy Center Report for the Center for American Progress speculates that implementing comprehensive immigration reform to legalize current undocumented immigrants and create flexible limits on future immigration in the context of full labor rights will produce large economic benefits.\textsuperscript{139} Specifically, the report estimated comprehensive immigration reform would result in at least an annual 0.84 percent increase in the United States’ GDP equaling $1.5 trillion in additional GDP over ten years, whereas temporary worker programs would only generate $792 billion over the same time period.\textsuperscript{140} Mass deportation would result in an annual 1.46 percent reduction in GDP, equaling a $2.6 trillion loss in GDP over ten years, not including actual deportation costs.\textsuperscript{141}

2. Comprehensive Immigration Reform and Immigrant Workers’ Rights

Contrary to anti-immigrant beliefs, concentrating on border control and deportation, rather than implementing regulations to legalize existing immigrants and reduce immigrant worker exploitation, contributes to depressing America’s economy. The U.S. Border Patrol’s annual budget has increased by 714 percent from 1992 to 2009, from $326.2 million to $2.7 billion.\textsuperscript{142} The U.S. Customs and Border Protection’s annual budget increased by 92 percent from 2003 to 2009, from $3.3 billion to $5.9 billion.\textsuperscript{143} As more taxpayer earnings are expended on border control and costly deportation proceedings, the unauthorized immigrant population in the U.S. has approximately tripled in size over the past two decades, from 3.5 million in 1990 to 11.9 million in


\textsuperscript{137} Id.

\textsuperscript{138} Id.


\textsuperscript{140} Id. at 2.

\textsuperscript{141} Id.

\textsuperscript{142} Id. at 4.

\textsuperscript{143} Id.
2008.\textsuperscript{144} Thus, tightening border enforcement appears ineffective in deterring illegal immigration, and in fact has numerous unintended consequences detrimental to the U.S. economy, American workers, and undocumented immigrants.\textsuperscript{145} These include more high risk border crossings resulting in thousands of migrant deaths over the years, greater incidents of people-smuggling which have increased dramatically in the past decade, and incentives for undocumented immigrants to extend their stays in the U.S. due to the high costs and physical risks they faced in entering the country.\textsuperscript{146}

Most importantly, enhanced enforcement creates a larger underground economy for undocumented immigrants, reducing available jobs for lower-skilled American-born workers.\textsuperscript{147} Immigrants’ constant fear of deportation results in the provision of cheap labor to employers to remain within the country, and firms are forced to compete for the supply of such labor, depressing low-wage labor markets.\textsuperscript{148} A 2008 Atlanta Federal Reserve Report describing this cycle found that “when a firm cuts costs by hiring unauthorized workers for lower wages, its competitors become more likely to hire unauthorized workers for lower wages, as well, in order to benefit from the same cost savings.”\textsuperscript{149}

While an enforcement-only approach does not provide an economically viable solution to unauthorized immigration to this country, learning from the successes and failures of past immigration reform efforts can assist in developing a comprehensive scheme beneficial to U.S. citizens and non-citizens alike. The Immigration Reform and Control Act of 1986 (IRCA) granting legal status to 1.7 million undocumented immigrants, and to an additional 1.3 million immigrants under the Special Agricultural Workers program, demonstrated that legalization measures increase immigrant upward socioeconomic mobility.\textsuperscript{150} Immigrants, now legal and therefore earning higher wages, invested more in their own educations, resulting in the acquisition of greater skills, better jobs, and even greater wages.\textsuperscript{151} This progression translated into more tax revenues and greater consumer purchasing power, benefiting the public treasury and the U.S. economy.\textsuperscript{152}

Although unauthorized immigration initially declined following the IRCA’s enactment, it failed to account for the U.S. economy’s continuing demand for immigrant labor in excess of the legal limits on immigration, and thus unauthorized immigration re-

\begin{footnotesize}
\begin{enumerate}
\item Hinojosa-Ojeda, supra note 139, at 4.
\item Id. at 5.
\item Id. at 5-6.
\item Id. at 6.
\item Id.
\item Hinojosa-Ojeda, supra note 139, at 7.
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
emerged during the economic boom of the 1990's.\textsuperscript{153} Instead of creating flexible limits on immigration capable of responding to shifts in future U.S. labor demand, the IRCA imposed employer sanctions on those who knowingly hired undocumented workers, much like the Legal Arizona Workers Act of 2007 (LAWA).\textsuperscript{154} Consequently, a new population of undocumented immigrants arose, more vulnerable to exploitation by unscrupulous employers, bearing the cost of employer sanctions in the form of lower wages.\textsuperscript{155} Currently, states and localities not only attempt to enact employer sanctions, but seek to sanction landlords for renting to undocumented housing applicants as well, as is the case with Hazleton, Pennsylvania’s Illegal Immigration Relief Act (IIRA).\textsuperscript{156} 

In addition, undocumented workers are so fearful of deportation that they accept unfair wage, are denied hour limitations and the right to organize, and can be subjected to child labor, sexual abuse, and dangerous conditions.\textsuperscript{157} More specifically, domestic and agricultural workers, the majority of whom are immigrants, are not covered by protections under the National Labor Relations Act as well as certain minimum wage and overtime protections under the federal Fair Labor Standards Act by virtue of their exclusion from the definition of “employee.”\textsuperscript{158} Furthermore, while domestic and agricultural workers are covered under federal anti-discrimination statutes, the Equal Employment Opportunity Commission often lacks jurisdiction to hear their cases due to minimum number of employee and workday requirements, denying them access to remedial justice.\textsuperscript{159} 

Undocumented workers who are otherwise entitled to state and federal statutory protections, are often denied their right to a remedy. The Supreme Court’s decision in Hoffman Plastics\textsuperscript{160} denies undocumented workers the right to the remedy of back-pay, the only monetary and individualized relief available to workers unlawfully terminated in violation of the National Labor Relations Act.\textsuperscript{161} That decision has since been applied in cases of sexual harassment, workers compensation and tort recovery for workplace injuries, and unlawful discrimination.\textsuperscript{162}

\textsuperscript{152} Id. at 9.

\textsuperscript{153} Id. See Chamber of Commerce of U.S. v. Whiting, 2011 WL 2039365 (U.S. May 26, 2011) (regarding the Legal Arizona Workers Act of 2007 (LAWA)).

\textsuperscript{154} Hinojosa-Ojeda, supra note 139, at 9. Both authorized and unauthorized Latino workers suffered lower wages due to increased discrimination against Latino job applicants who “appeared” unauthorized, and greater labor contractor use.


\textsuperscript{156} Deportation by Default, supra note 18, at 6.


\textsuperscript{158} Id.


\textsuperscript{160} Migrant Labor Working Group, supra note 158.

\textsuperscript{161} Id.
Session participants agreed government-created barriers\textsuperscript{163} as well as practical barriers to undocumented immigrants’ realization of fair wages and labor protections, legal status, access to housing, and access to justice results in barriers to their upward socio-economic mobility, not only hurting America’s economy, but producing even larger global ramifications by perpetuating an underclass of the working poor. Many also felt that the emphasis on border control, deportation, and detention diverts monetary resources from needed social services for all Americans, correlates with increased homelessness, poverty, and immigrant crime, and diminishes the country’s moral fiber by separating families.

3. A Human Rights Approach

Participants recognized that the current harsh economic and political climate, as well as the numerous restrictions to accessing justice in U.S. courts, requires adopting a broad human rights framework targeting both immigrant and non-immigrant groups to achieve a communal fundamental rights discourse among people in the United States. As mentioned in previous sessions, they noted the usefulness of building alliances among our diverse immigrant populations, as well as between native-born and immigrant minority groups with long histories of struggle against U.S. discrimination and newer immigrant groups currently struggling to advance their rights in this country. Although these groups can more easily unite under either shared identities or mutual objectives, participants emphasized the importance of creating common identities among struggling immigrants and American citizens in order to appeal to American humanity, and to fuel immigrant rights efforts.

Some suggested focusing on homelessness and poverty as a public health issue affecting millions of American citizens, as well as undocumented immigrants, to foster common ground between the two groups. One participant pointed out the utility in learning from past successful initiatives, such as the global rights campaign supporting HIV patients’ equal access to housing. Others recommended broadening the scope to address naysayers and those with anti-immigrant sentiments, including them in immigrant rights discussions and hopefully raising awareness that citizens and non-citizens should both be entitled to basic human rights. Working together to advance those rights can achieve economic prosperity for both groups in the United States.

Participants also agreed that using the expansive framework of international conventions is necessary to go beyond local or national levels to advance immigrant human rights in an emerging global economy. One participant noted international covenants bestow greater rights to individuals than U.S. domestic laws, and proposed that while domestic laws should be employed in immigrant rights efforts, they are the

\textsuperscript{163} Including statutory, administrative, and judicially-created barriers.
floor, not the ceiling.\textsuperscript{164} Additionally, international instruments can be used to create
greater corporate social responsibility regarding the private sector’s treatment of
immigrant workers. International Labour Organization declarations, international
agreements of the United States, and ICCPR provisions, all binding on the U.S., recognize
all workers’ rights to organize and bargain collectively, entitlements to workers
compensation and safe and healthy working conditions, and the right to non-
discrimination.\textsuperscript{165}

Furthermore, Resolutions of the United Nations, of which the United States is a
member, can be used to defend immigrant rights in the workplace. A UN report on
human rights and business enterprises found that permissive legal policies regarding
numerous nations’ companies create an environment where human rights abuses can
often occur without adequate sanction or reparation.\textsuperscript{166} Consequently, in its 8th session
in June 2008, the UN Human Rights Council adopted Resolution 8/7, instituting a
corporate social responsibility framework to be used by national governments in
developing corporate policies.\textsuperscript{167} The framework, dubbed the ‘Protect, Respect, and
Remedy’ framework by its creator, Special Representative to the UN Secretary-General,
Professor John Ruggie, rests on three principles: (1) States’ duties to enact appropriate
policies and regulations, and adjudicate claims to protect against third-party human
rights abuse, including business enterprise abuse; (2) corporate responsibility to respect

\textsuperscript{164} See International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21
(defining discrimination more broadly than U.S. domestic laws).

\textsuperscript{165} Tough, Fair, and Practical, supra note 29, at 6. See International Labour Organization, Declaration of
http://www.ilo.org/declaration/thedecARATION/textdeclaration/lang--en/index.htm (binding on the
United States as a member of the International Labour Organization); North American Agreement on
Labor Cooperation Between the Government of the United States of America, the Government of Canada
19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 171 [hereinafter ICCPR][article 22 states that “[e]veryone shall have
the right to freedom of association with others, including the right to form and join trade unions for the
protection of his interests”]. International human rights instruments such as the ICCPR, ICERD, and UDHR
create affirmative obligations on State Parties to take all necessary measures to protect all rights
incorporated in their treaty provisions. Thus, advocates have argued that where undocumented
immigrants have experienced anti-union discrimination (where the employer fires a worker for engaging
in concerted activity protected under the right to freedom of association), the State, by following the
Hoffman Plastic decision, is complicit in the employer’s denial of this right by depriving undocumented
workers a remedy for such discrimination (See Migrant Labor Working Group, supra note 158).

\textsuperscript{166} Special Representative of the Secretary-General on the Issue of Human Rights and Transnational
Corporations and Other Business Enterprises, Business and Human Rights: Towards Operationalizing the
available at http://www.unhchr.org/refworld/docid/49fa98a2.html [hereinafter Protect, Respect, and
Remedy].

\textsuperscript{167} Id. at 3. See UN Human Rights Council Res. 8/7, Rep. of the Human Rights Council, 8th Sess., June 2-18,

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human rights, and to act with due diligence to avoid infringing others’ rights as well as to address adverse impacts when such infringements occur; and (3) the provision of greater victim access to effective judicial and non-judicial remedies for human rights violations.\textsuperscript{168} Professor Ruggie’s Guiding Principles for the framework’s implementation was adopted by the UN Human Rights Council in June 2011.\textsuperscript{169} However, human rights groups such as Amnesty International, Human Rights Watch, and the Economic, Social, and Cultural Rights Network (ESCR-Net) were concerned at the time of adoption that its provisions would not go far enough in implementing the ‘protect, respect, and remedy’ principles effectively.\textsuperscript{170}

Finally, participants highlighted the need for immigrant rights activists and human rights advocates alike to ensure an accurate review of the United States’ efforts to fulfill its human rights obligations under international instruments during the Universal Periodic Review (UPR), which seeks to assess the human rights records of all 192 UN member states by the end of 2011.\textsuperscript{171} In addition, participants emphasized the need to continue monitoring the fulfillment of the United States’ human rights commitments post-UPR. For example, during the 16th session of the UPR in which the United States’ human rights record was assessed, the U.S. reiterated its commitment to improving its immigration system, citing DHS’ efforts to reform detention center management, access to health care, safety measures, and to improve uniformity among facilities.\textsuperscript{172} The U.S. also reaffirmed its commitment to combat racial and ethnic profiling by local law enforcement officials by strengthening protections and training against such discrimination.\textsuperscript{173} In examining conditions of at-risk populations to ensure U.S. actions


\textsuperscript{173} Id.
conform to its promises, advocates can make certain that no group will remain invisible in its struggle to achieve human dignity in America.

The Session’s Boston Principles Recommendations:

- Reflect the long history of human rights movements in the United States.
- Refer to “all human beings, including noncitizens” to emphasize universality of fundamental human rights.
- Ensure inclusion of housing, sustainable development, and labor rights.
- Address corporate social responsibility and corporate accountability. \(^{174}\)

\(^{174}\) Business and Human Rights, supra note 169.
Institute Program

Participation in the Institute does not reflect endorsement of the Boston Principles.
BEYOND NATIONAL SECURITY

Immigrant Communities and Economic, Social and Cultural Rights

OCTOBER 14–15, 2010

Northeastern University
School of Law

Program on Human Rights and the Global Economy
“Beyond National Security: Immigrant Communities and Economic, Social and Cultural Rights” is the latest in a series of institutes on cutting-edge social justice issues sponsored in the last five years by the Program on Human Rights and the Global Economy (PHRGE) at Northeastern University School of Law. With Ford Foundation funding, this year PHRGE is hosting more than two dozen leading community activists, immigrants’ rights lawyers, human rights advocates and scholars for this two-day institute.

We’re focusing on two significant trends in the treatment of noncitizens in the United States. Beginning in the mid-1990s, and gaining momentum after September 11, 2001, the federal government has imposed increasingly harsh deportation policies, dramatically expanded the enforcement of immigration laws, and delegated more and more immigration enforcement power to state and local police — all in the name of national security.

At the same time, a wave of state and local laws has taken aim at the rights of noncitizens in areas such as employment, housing, health, family life and education. On both fronts, immigrant communities and their supporters throughout the United States are increasingly turning to the human rights framework in response. An impressive group of participants from a wide range of backgrounds will address these developments during the course of this intensive institute.

During closed working sessions, participants will share information and experiences about the impact of recent federal, state and local laws and policies on the human rights of noncitizens. We’ll also strategize on how international human rights approaches to housing, healthcare, education and workers’ rights can support or strengthen existing social justice work. Participants will explore responses to discrimination and violence targeted at particular groups within immigrant communities — including racial, sexual, ethnic, religious, or linguistic minorities, children, women and persons with disabilities — and how such discrimination undermines other human rights.

We are also excited to welcome the public to two roundtables for further discussion of these critical issues. Institute participants are associated with a wide variety of social justice organizations and projects. We encourage you to visit our website to learn more about their ongoing work, as well as PHRGE programs and projects.

Courtroom advocacy, law reform, administrative policy, popular education and civil society activism are critical as the country prepares for major elections and an unprecedented review in November by the United Nations Human Rights Council on its human rights record (the “Universal Periodic Review” [UPR]). At this institute, participants will collaborate to draft “Boston Principles on the Economic, Social and Cultural Rights of Noncitizens,” drawing on international standards. As part of the growing movement to “bring human rights home,” we believe that such principles can be used by advocates as a persuasive organizing tool and adopted by state and local governments in the United States.

We look forward to this gathering as another step in building a sustainable human rights culture at home and transnationally. Thank you for your participation in this important work!

Hope Lewis and Rachel Rosenbloom, Institute Co-Chairs
Gillian MacNaughton, Executive Director,
Program on Human Rights and the Global Economy
<table>
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<tr>
<th>Time</th>
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| 11:00 – 11:45 a.m. | Registration and Lunch Reception  
Foyer and Second Floor Commons, Dockser Hall  
(box lunch available for registered attendees) |
| 11:45 a.m. – 1:30 p.m. | Beyond National Security: Immigrant Communities and Economic, Social and Cultural Rights  
Public Roundtable Discussion  
240 Dockser Hall |
| 2:00 – 3:30 p.m. | The Economic, Social and Cultural Impact of Deportation, Detention and Profiling  
Nonpublic Session |
| 3:45 – 5:15 p.m. | Immigrant Communities and Well-Being: The Right to Health, the Right to Healthcare and the Rights of Immigrants with Disabilities  
Nonpublic Session |

**INTRODUCTION**

Martha Davis  
Associate Dean for Clinical and Experiential Education  
Professor of Law and Faculty Co-Director  
Program on Human Rights and the Global Economy  
Northeastern University School of Law

**WELCOME**

Joseph Aoun  
President  
Northeastern University

**DISCUSSANTS**

Ana Avendaño  
Assistant to the President and Director  
Immigration and Community Action  
AFL-CIO

Muzaffar Chishti  
Director  
Migration Policy Institute at New York University

Wade Henderson  
President and CEO  
Leadership Conference on Civil Rights and Human Rights

Marielena Hincapié ’96  
Executive Director  
National Immigration Law Center

**FACILITATOR**

Margaret Burnham  
Professor of Law and Director  
Civil Rights and Restorative Justice Project  
Northeastern University School of Law

**DISCUSSANTS**

Ellen Gallagher ’91  
Special Liaison Counsel to the Chief Counsel  
United States Citizenship and Immigration Services

Janis Rosheuvel  
Director  
Families for Freedom

Kathleen Sullivan  
Consultant

John Wilshire-Carrera ’85  
Co-Managing Attorney  
Harvard Immigration and Refugee Clinic  
Greater Boston Legal Services  
Clinical Instructor  
Harvard Law School

**FACILITATOR**

Rachel Rosenbloom  
Assistant Professor of Law and Institute Co-Chair  
Northeastern University School of Law

**DISCUSSANTS**

Ana Malhotra  
Practitioner-in-Residence  
Center for Social Justice  
Seton Hall School of Law

Laura Rótoło  
Staff Attorney  
American Civil Liberties Union of Massachusetts

Rachel Rosenbloom  
Assistant Professor of Law and Institute Co-Chair  
Northeastern University School of Law

**FACILITATORS**

Aziza Ahmed  
Assistant Professor of Law and Faculty Affiliate  
Program on Human Rights and the Global Economy  
Northeastern University School of Law

Brook Baker ’76  
Professor of Law and Faculty Affiliate  
Program on Human Rights and the Global Economy  
Northeastern University School of Law

**INSTITUTE DINNER**

Nonpublic Session

**DINNER ADDRESS:**  
“The Ombudsman Movement: An International and Comparative Perspective on Local Justice”

Arlene Brock  
Ombudsman for Bermuda and Regional Vice President  
International Ombudsman Institute
Friday, October 15, 2010

8:30 – 9:00 a.m.
Continental Breakfast

9:00 – 10:30 a.m.
Family Life: Gender, Children and Human Rights in the Home and Community
Nonpublic Session

DISCUSSANTS
Paula Aymer
Associate Professor
Department of Sociology
Tufts University

Carline Desiré
Executive Director
Association of Haitian Women in Boston (AFAB)

Jonathan Todres
Associate Professor of Law
Georgia State University College of Law

FACILITATORS
Libby Adler ’94
Professor of Law
Northeastern University
School of Law

Mary O’Connell ’75
Professor of Law
Northeastern University
School of Law

• BREAK

10:35 – 11:45 a.m.
At the Intersection: Non-Discrimination, Equality and the Identities of Immigrants
Nonpublic Session

DISCUSSANTS
Dimple Abichandani ’02
National Security and Human Rights Pooled Fund Program Officer
Proteus Fund

Omar Jadwat
Staff Counsel
Immigrant Rights Project
American Civil Liberties Union

Nancy Kelly ’84
Co-Managing Director
Harvard Immigration and Refugee Clinic
Senior Attorney
Greater Boston Legal Services Immigration Unit

Susan Ostrander
Professor
Department of Sociology
Tufts University

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Hope Lewis
Professor of Law, Institute Co-Chair and Faculty Affiliate
Program on Human Rights and the Global Economy
Northeastern University School of Law

Margaret Woo
Professor of Law and Faculty Co-Director
Program on Human Rights and the Global Economy
Northeastern University
School of Law

• BREAK

12:00 – 1:30 p.m.
Bringing Human Rights Home to Immigrant Communities
Public Roundtable Discussion
240 Dockser Hall
(box lunch available for registered attendees)

DISCUSSANTS
Eva Millona
Executive Director
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA) Co-Chair
Governor’s Advisory Council on Refugees and Immigrants

Salvador Reza
Coordinator
Tonatierra Community Development Institute

Rinku Sen
Director and Publisher
Applied Research Center/ColorLines

Michael Stein
Cabell Research Professor of Law
College of William and Mary
School of Law Director
Harvard Project on Disability
Harvard Law School

Paul Watanabe
Professor of Political Science
Director
Institute for Asian American Studies
University of Massachusetts Boston

FACILITATOR
Aarti Shahani
Journalist and Soros Public Service Fellow
Kennedy School of Government
Harvard University

• BREAK

(continued on next page)
2:00 – 3:30 p.m.
Sustainable Communities: Supporting Decent Work, Housing, Health and Anti-Poverty Strategies
Nonpublic Session

DISCUSSANTS
Cecelie Counts
Legislative Representative
AFL-CIO

Maria Foscarinis
Executive Director
National Law Center on Homelessness and Poverty

Rebecca Johnson
Health Advocacy Faculty
Sarah Lawrence College
Writer
Urban Ecology Blog

Sarah Paoletti
Director
Transnational Legal Clinic
Practice Associate Professor of Law
University of Pennsylvania
School of Law
Senior Coordinator
United States Human Rights Network UPR Project

Rocio Saenz
President
SEIU Local 615

FACILITATORS
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Professor of Law and Faculty Affiliate
Program on Human Rights and the Global Economy
Northeastern University
School of Law

Jane Moisan ‘10
Fellow
Program on Human Rights and the Global Economy
Northeastern University
School of Law

3:30 – 3:45 p.m.
Closing Remarks—Looking Forward to Human Rights for All

Hope Lewis
Professor of Law and Institute Co-Chair

Gillian MacNaughton
Executive Director and Institute Facilitator
Program on Human Rights and the Global Economy

Rachel Rosenbloom
Assistant Professor of Law and Institute Co-Chair

ADDITIONAL PARTICIPANTS
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University Committee on Human Rights Studies
Jeremiah Smith Jr. Lecturer in Law
Harvard Law School
Lecturer in Public Policy
Kennedy School of Government
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Professor of Law
Director
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Lucy Williams
Professor of Law and Faculty Co-Director
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Bringing Economic, Social and Cultural Rights Home to Immigrant Communities in Massachusetts

Following the close of our formal program, you are invited to related events sponsored by the Human Rights Caucus and other Northeastern University School of Law student groups. PHRGE encourages all participants to attend.
Acknowledgments

The generous support of the Ford Foundation is gratefully acknowledged.

The institute co-chairs also thank the many individuals and organizations that made this gathering possible, including, but not limited to:

**INSTITUTE PLANNING GROUP**
- Olivier Andre ’09, PHRGE Fellow
- Jacqueline Davis, Events Coordinator
- Stephen Evans, Administrative Assistant to the Deans
- Deborah Feldman, Director, Office of Communications
- Janis Galligan, Director, Administrative Operations and Personnel
- Hope Lewis, Professor of Law and Institute Co-Chair
- Gillian MacNaughton, PHRGE Executive Director and Institute Facilitator
- Mariah McGill ’09, PHRGE Ford Foundation Fellow and Institute Coordinator
- Jane Moisan ’10, PHRGE Fellow and Institute Facilitator
- Rachel Rosenbloom, Assistant Professor of Law and Institute Co-Chair

**INSTITUTE FACILITATORS**
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- Aziza Ahmed, Assistant Professor of Law and PHRGE Faculty Affiliate
- Brook Baker ’76, Professor of Law and PHRGE Faculty Affiliate
- Margaret Burnham, Professor of Law
- Rashmi Dyal-Chand ’94, Professor of Law and PHRGE Faculty Affiliate
- Mary O’Connell ’75, Professor of Law
- Aarti Shahani, Journalist and Soros Fellow, Kennedy School of Government

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- Sophie Dalsimer ’13
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- Allison Garren ’11
- Lauren Garrity ’13
- Jacklyn Gurany ’10, PHRGE Fellow
- Jessica Hahn ’10, Institute Rapporteur
- Sanjay Katarmal ’12, College of Engineering
- Rakhi Lahiri ’10, PHRGE Fellow and Institute Rapporteur
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- Nicholas Martin ’11, College of Social Sciences and Humanities
- Deena Sharuk ’12, PHRGE Research Associate
- Shatilla Shera DeLeon ’12, PHRGE Research Associate
- Lauren Slotkoff ’12
- Sarah Tishler ’11, College of Social Sciences and Humanities

**NORTHEASTERN UNIVERSITY FACULTY AND ADMINISTRATION**
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- Mielie Marquis, Senior Associate Director, Office of Development and Alumni/ae Relations
- David McNeil, Director, and Michael Calabrese and Bradley Whitmarsh, Office of Computer Services
- Jan McNew, Faculty Administrative Assistant
- Susan Verity, Faculty Administrative Assistant

**ORGANIZATIONS**
- Human Rights Interest Group
- American Society of International Law
- Human Rights Caucus
- Northeastern University School of Law
- International Law Society
- Northeastern University School of Law
- Victoria Sax Design

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Northeastern University
School of Law

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